IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

C.A. No.8007/2006 and 8008/2006 in LPA St. No.17806/2006
Kishore Manohar Muley Vs. Shri Ravindra Dadarao Deshmukh and others

| Office Notes, Office Memoranda of Coram appearances, Court's orders or directions and Registrar's orders. | Court's or Judge's Orders |
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CORAM : A.P. LAVANDE & R.V. MORE,JJ.
DATED : 14TH AUGUST, 2007

Heard Mr. Samarth, learned counsel for the applicant, Mr. H.A. Deshpande, learned counsel for respondent no.1. and Mr. Khapre, learned counsel for respondent nos.2 and 3.

Both these applications are being disposed of by common order. C.A. No.8007/06 has been filed by the appellant seeking leave to appeal against judgment and order dated 28.10.2005 passed in Writ Petition no. 563/1994 filed by the respondent no.1. C.A. No.8008/06 has been filed by the appellant seeking condonation of delay of one year and 11 days in filing appeal against said judgment and order.

The facts leading to filing of present applications are as under:-

Respondent no.1 was appointed as Lecturer

by respondent no.2. He was terminated by the management. He filed appeal to College Tribunal which was dismissed. Respondent no.1 filed writ petition No.563/94 challenging the order passed by the School Tribunal. By judgment and order dated 28.10.2005, the learned Single Judge allowed writ petition and directed reinstatement of respondent no.1. Against the said judgment and order, the management has preferred LPA which is pending. In the said LPA the Division Bench of this Court has granted stay of the judgment and order passed by learned Single Judge.

It is the case of the appellant that he was appointed in the vacancy which had arisen on account of termination of respondent no.1 and he has been working as Lecturer since 1989. On 14.10.2006 he received letter from the management informing him about the proceedings initiated by respondent no.1 and the stay granted by the Division Bench of this Court. The appellant was also informed that in the event the appeal is dismissed by the management, his services are likely to be terminated. Apprehending termination in the event appeal filed by the management is dismissed, the appellant has filed application seeking leave to file

LPA to challenge the judgment and order passed by learned Single Judge in Writ Petition No.563/94.

Mr. Samarth, learned counsel for the appellant submitted that the appellant was appointed in the vacancy which was created on account of termination of the appellant and as such in the event the appeal filed by the management is dismissed, the appellant is likely to be terminated and as such he is entitled to challenge the judgment and order passed by learned Single Judge allowing writ petition filed by respondent no.1. Mr. Samarth further submitted that his rights of the petitioner are directly affected by the impugned judgment and order and since he was informed only in October 2006 about the proceedings arising out of the appeal filed by respondent no.1 and pendency of the LPA filed by the management in October 2006, delay of one year 11 days in filing appeal be condoned.

Per contra, Mr. Deshpande, learned counsel for respondent no.1 submitted that the proceedings taken up by the appellant are in collusion with the management with a view to cause prejudice to respondent no.1. He further submitted that in case the appellant was appointed in place of the appellant, he has no right to challenge the judgment

and order of learned Single Judge inasmuch as he is bound by result in LPA preferred by the management and as such he does not have any independent cause of action to challenge an order passed in favour of respondent no.1. He further submitted that in case the appellant was not appointed in the vacancy granted by termination of respondent no.1, the appellant has no right to file appeal against judgment and order passed by learned Single Judge arising out of the appeal preferred by respondent no.1 inasmuch as in case of termination of the appellant, the appellant will have independent right to challenge his termination by filing the appeal to the Tribunal.

Mr. Khapre learned counsel for respondent nos.2 and 3 placed the orders of appointment and approval granted for the appointment of the appellant.

Having perused the records and having considered the submissions advanced by learned counsel for the parties, we are of the considered opinion that the application filed by the appellant seeking leave to file appeal does not deserve to be granted. The letter of appointment of the appellant and approval granted do not disclose that the

appellant was appointed in the vacancy created by the termination of the services of respondent no.1. Neither the letter of appointment issued to appellant nor approval granted by the University mentions that the appellant is appointed in the vacancy created on account of termination of respondent no. 1. This being the position, we find no merit in the submissions of Mr. Samarth that in the event of appeal filed by the management is dismissed, the interest of the appellant will be prejudicially affected on account of his services by the management. In case the appellant was appointed in place of respondent no.1 it was for the management to mention in the letter of appointment that the appellant was being appointed in the vacancy created by termination of respondent no.1 and consequently, seek approval from the University to fill up the vacancy subject to result of the appeal preferred by respondent no.1 and further proceedings that may be taken by the management or the respondent no.1 as the case may be. It is also evident that since the appellant has not been appointed in the vacancy created by termination of respondent no.1, in the event of the services of the appellant are terminated he will have independent

cause of action to challenge his termination. We find that this is not a fit case in which the appellant deserves to be granted leave to appeal from the judgment and order dated 28.10.2005 passed by learned Single Judge in Writ Petition no.563/1994 and, therefore, the application for seeking leave to appeal deserves to be dismissed.

For the reasons aforesaid, C.A. No.8007/06 is dismissed. Since we have declined the prayer for leave to appeal, the question of condoning the delay does not arise. Hence, C.A. No.8008/06 is also dismissed. The parties to bear their own costs.

JUDGE JUDGE

MLA.